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IN THE
Supreme Court of the United States

No. 298. OCTOBER TERM, 1947.

In the Matter of

WILLIAM S. FENERTY.

**BRIEF OF THE COMMITTEE OF CENSORS OF THE
PHILADELPHIA BAR ASSOCIATION IN OPPOSI-
TION TO PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE COMMON-
WEALTH OF PENNSYLVANIA.**

*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

The Committee of Censors of the Philadelphia Bar Association, Respondent, respectfully submits this brief in opposition to the Petition of William S. Fenerty for a writ of certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

I. QUESTIONS PRESENTED.

We have thoroughly searched the record, but have been unable to find that it presents any federal question of substance which merits the consideration of your honorable court.

As more fully appears in our argument, with due deference to the petitioner, we cannot agree that he has arrived at an accurate appraisal of the issues nor has he developed through the questions propounded in his brief any cognizable or review-worthy problems.

II. ARGUMENT.

1. No Substantial Federal Question Arises Out of the Entry of the Order of Disbarment and Proceedings in Connection Therewith.

At the outset, it is well to emphasize that the petitioner has had his fair day in court and has had a full hearing on the points he strives to make under III, IV and V of his questions presented.

As stated in the opinion of the Pennsylvania Supreme Court, *Fenerty Disbarment Case*, 356 Pa. 614, 616, petitioner appeared at the meetings of the Committee of Censors of the Philadelphia Bar Association, cross-examined witnesses and testified. He likewise appeared at the hearings in court, cross-examined witnesses and testified. Both these bodies independently found that based on the evidence adduced the disbarment was merited. In the Discipline Court petitioner presented several petitions for reconsideration of the order of disbarment (R. 350a, 359a, 368a).

The Pennsylvania Supreme Court which reviews disbarment cases de novo (*Moyerman's Case*, 312 Pa. 555, 562), thus expressed itself: "The opinion written in support of the order of disbarment fully vindicates the conclusion of the court. If the matter were properly before us for review we should be required to affirm the order": *Fenerty Disbarment Case*, 356 Pa. 614, 616. Hence all three forums deliberating the problem decided adversely to petitioner and found his disbarment to be warranted.

In other words, the record fails to show that petitioner was denied any reasonable opportunity to fully tell his side of the story. The contention that he was denied the benefit of due process therefore necessarily cannot stand: *State of Missouri at the Relation of Leon Hurwitz v. Emmett P. North*, 271 U. S. 40, 42; *Emmons v. Smitt*, 149 F. 2d 869, 871, cert. den., 326 U. S. 746.

In the absence of a clear showing of the violation of a federal right secured by the Fourteenth Amendment, your honorable court has been loathe to interfere with the responsibility of a state over the choice and discipline of the personnel of its own bar: *Re Clyde Wilson Summers*, 325 U. S. 561, 570; *Bernard B. Selling v. George W. Radford*, 243 U. S. 46, 50; Cf. *Ex Parte Burr*, 9 Wheat (US) 529.

A substantial federal question has not been made out in this phase of petitioner's case: *Menza B. Grace v. Board of Commissioners of the State Bar of Alabama*, 320 U. S. 708.

2. No Substantial Federal Question Arises Out of the Action of the Pennsylvania Supreme Court Quashing the Appeal on Its Own Motion and Dismissing the Petition for Rehearing.

It clearly appears of record that petitioner did not perfect his appeal to the Supreme Court of Pennsylvania within the time limited by statute. The docket entries show the order of disbarment as being entered March 30, 1946 (R. 1a), and the certiorari from the Supreme Court as not being filed until October 22, 1946 (R. 3a), nearly seven months thereafter.

Contrary to the assertions of petitioner, despite rules of court governing the procedure for the quashing of appeals, courts do quash appeals of their own motion for defects obvious from the record: *Edmonson v. Bloomshire*, 74 U. S. 306; *Tinkoff v. West Publishing Co.*, 152 F. 2d 754, cert. denied, 67 S. Ct. 75.

A Pennsylvania case in point is *Jones v. Marion Coal Company*, 227 Pa. 509, where the Pennsylvania Supreme Court of its own motion quashed an appeal taken 17 days after the time fixed by statute. No motion to quash was made, nor does the point appear anywhere in the paper books.

In *Commonwealth v. Greenfield*, 103 Pa. Superior Ct. 489, the Pennsylvania bar was fully apprised that appeals

are perfected too late at the peril of an appellant. Said the court at page 496: "An examination of the original record discloses that the appeal was not perfected within the *time limited* by statute. As the Commonwealth has not moved to quash we have considered the merits, but our action in so doing is not to be considered as establishing a precedent."

Petitioner gained a full hearing as to the reasonableness of time consumed in perfecting his appeal by setting out his explanations in detail for the Pennsylvania Supreme Court in his Petition for Rehearing of Appeal. After consideration of the allegations of the said petition, the Pennsylvania Supreme Court took the following action: "Petition Dismissed Per Curiam" (R. 461a, 462a). If petitioner's cause presented any persuasive equities the court had ample opportunity to take corrective action at that time.

The petition for Rehearing of the appeal operated to suspend the finality of the State Court's judgment pending the court's further determination whether the judgment should be modified. Indeed, if the petition for rehearing had not had the effect of reopening the whole case to permit the State Supreme Court to consider the allegations petitioner made therein, his present petition for certiorari before your honorable court would be quashed as being too late, because it was filed over three months after the Pennsylvania Supreme Court's judgment of May 7, 1947: *Department of Banking, State of Nebraska v. Pink*, 317 U. S. 264.

The Commonwealth of Pennsylvania "is free to regulate the procedure of its courts in accordance with its own conception of policy and fairness, unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental," *Snyder v. Commonwealth of Massachusetts*, 291 U. S. 97, 105. This is a salutary rule based on the necessity for the prompt, efficient and just dispatch of public

business. Petitioner has made no such showing as should impel your honorable court to prescribe to the Pennsylvania Supreme Court how it should interpret an Act of the Pennsylvania Assembly governing the time for taking appeals.

3. Conclusion.

It is respectfully submitted that for the reasons above set forth, the Petition of William S. Fenerty for a writ of certiorari to the Supreme Court of the Commonwealth of Pennsylvania, should be denied by your Honorable Court.

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September 11, 1947.